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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,971	10/15/2003	Andrea Koerselman	42280.2400	7935
20322	7590	10/28/2005		
SNELL & WILMER ONE ARIZONA CENTER 400 EAST VAN BUREN PHOENIX, AZ 850040001			EXAMINER BLAKE, CAROLYN T	
			ART UNIT 3724	PAPER NUMBER

DATE MAILED: 10/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

TNT

Office Action Summary

Application No.

10/685,971

Applicant(s)

KOERSELMAN ET AL.

Examiner

Carolyn T. Blake

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-11 is/are pending in the application.
- 4a) Of the above claim(s) 9-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 5-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to applicant's amendment received on August 16, 2005.
2. The objection to the drawings is withdrawn in view of the amendment.
3. The objection to claims 2 and 5 is withdrawn in view of the amendment.
4. The text of those sections in Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

5. Claims 1, 3, and 5-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Börner (3,583,454) in view of Petit (6,253,756).

Börner discloses the invention substantially as claimed, including a food cutting device comprising: a body having two longitudinal edges (8, 9) and a blade (2) configured such that its cutting edge is a predetermined distance from a plate (1) provided therein; a food holder (12) having a guide (21) configured to slidably connect to at least one of said longitudinal edges (8, 9) of said body to thereby bring a food item in contact with said blade (2). The food holder (12) is configured to slide along an axis parallel to said longitudinal edges (8, 9), and the plate (1) is removable from said body. Furthermore, Börner discloses the food holder (12) includes a hollow portion (13), a plunger portion (15), and a plurality of protrusions (14) along at least one of its surfaces. Börner fails to disclose the guide is slidably and rotatably attached to the food holder via a hinge. However, Petite discloses a cutting device wherein the holder (15) is slidably and rotatably attached to the guide (5/6) via a hinge (15a/15b). See col. 3, lines 35-37

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and 39-41. The hinge allows the device to move from an inactive position to an active position. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to rotatably attach the food holder to the guide via a hinge, as disclosed by Petit, on the Börner device for the purpose of moving the device from an inactive to an active position.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Börner in view of Petit as applied to claim 1 above, and further in view of Kim (5,765,472). Börner fails to disclose the blade is substantially "V"-shaped. However, Kim discloses a food cutting device wherein the blade (24) is substantially "V"-shaped. See FIG 1. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a substantially "V"-shaped blade, as disclosed by Kim, on the Börner device for the purpose of creating a particular cut.

Response to Arguments

7. Applicant's arguments filed August 16, 2005 have been fully considered but they are not persuasive.

Regarding the argument the Petit device does not disclose a hinge, it should be noted the examiner is interpreting the term "hinge" to mean "a device that allows the turning or pivoting of a part." As such, Petit clearly shows a hinge (15a/15b). In addition, Applicant admitted on the record the Petit device allows for pivoting (*Remarks*, section D, paragraph 2).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by

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combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Börner teaches a rectilinearly movable cutter mounted on guide rails, but fails to teach a hinge as claimed. The Petit device teaches a rectilinearly movable cutter mounted on guide rails with a hinge that allows the cutter to move from an active to an inactive position. Therefore, to combine the Börner and Petit references to show a hinge is obvious.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn T. Blake whose telephone number is (571) 272-4503. The examiner can normally be reached on Monday to Friday, 8:00 AM to 5:30 PM, alternating Fridays off.

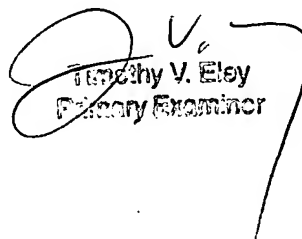
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on (571) 272-4514. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CB

October 26, 2005



Timothy V. Eley
Primary Examiner